# EXHIBIT 4

**BEFORE THE**
**NEW MEXICO STATE CORPORATION COMMISSION**

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| IN THE MATTER OF THE | § | |
| INTERCONNECTION CONTRACT | § | |
| NEGOTIATIONS BETWEEN AT&T | § | |
| COMMUNICATIONS OF THE | § | |
| MOUNTAIN STATES, INC., AND GTE | § | DOCKET NO. 97-35-TC |
| SOUTHWEST INCORPORATED | § | |
| PURSUANT TO 47 U.S.C. SECTION 252 | § | |
| OF THE TELECOMMUNICATIONS | § | |
| ACT OF 1996 | § | |

# DIRECT TESTIMONY OF

# MEADE C. SEAMAN

## ON BEHALF OF

## GTE SOUTHWEST INCORPORATED



**March 31, 1997**

**BEFORE THE NEW MEXICO STATE CORPORATION COMMISSION**

**DIRECT TESTIMONY OF MEADE C. SEAMAN**

**Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

A. My name is Meade C. Seaman. My business address is 600 Hidden Ridge, Irving, Texas, 75038.

**Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

A. I am employed as Director -- Local Competition/Interconnection Program Office for GTE Telephone Operations, which has telephone operations in 28 states.

**Q. PLEASE DESCRIBE YOUR EDUCATION AND WORK EXPERIENCE.**

A. I graduated from the University of South Florida in 1976 with a Bachelor's degree in Accounting. In 1988, I graduated from Indiana Wesleyan University with an M.B.A.

I began my career in the telecommunications industry in 1976 with General Telephone Company of Florida as a Business Relations Assistant. In 1983, I joined GTE Service Corporation in Irving, Texas, as Staff Manager--Interchanged Service Compensation. In 1985, I was named Director--Regulatory and Industry Affairs, where I was responsible for the development and coordination of all non-rate case related proceedings. In October 1994 I became Director-Demand Analysis and Forecasting, where my responsibilities

included forecasting of all line-related and usage-related services. I was recently appointed to my current position as Director--Local Competition/Interconnection Program Management Office.

**Q. WHAT ARE YOUR PRINCIPLE RESPONSIBILITIES IN YOUR CURRENT POSITION?**

A. My principal responsibilities include negotiating interconnection, unbundling, and resale agreements with requesting carriers and developing policies relating to local competition. I also am responsible for leading GTE's arbitration efforts.

**Q. HAVE YOU TESTIFIED IN OTHER PROCEEDINGS BEFORE?**

A. Yes. I have testified before the commissions in Ohio, Indiana, Missouri, Pennsylvania, Iowa and Illinois.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

A. The purpose of my testimony is to: 1) discuss some general topics that may be applicable in the contract between GTE and AT&T, as well as (2) describe GTE's negotiations with AT&T, and (3) summarize GTE's Response to fundamental issues raised in AT&T's

Petition. But first, I will briefly discuss the Telecommunications Act of 1996 and the FCC's implementing rules as they relate to GTE's pricing proposal.

## The Telecommunications Act and the FCC's Rules

**Q. PLEASE COMMENT ON THE TELECOMMUNICATIONS ACT OF 1996 (THE ACT) AND THE IMPLEMENTING RULES ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN ITS FIRST REPORT AND ORDER.**

A. The Act itself is unprecedented, and makes fundamental changes to the local telecommunications industry. Specifically, the Act is intended to encourage competition by requiring incumbent local exchange carriers (ILECs) such as GTE to provide interconnection and access to unbundled network elements at cost-based rates, and to offer services for resale at wholesale rates based on an ILEC's avoided costs.

The FCC's rules, however, contradict the Act on several significant points. For example, AT&T requests interconnection, services, and unbundled elements under § 251© of the Act. The prices for these facilities and services are subject to the pricing standards set forth in § 252(d)(1)-(3). The Act expressly provides that the ***State Commissions*** have exclusive authority to establish and apply these standards. The FCC, however, set out

detailed rules and methodologies of its own for these pricing standards, precluding States from considering other methodologies. The FCC also purported to establish "default proxy rates" for wholesale services and unbundled elements that States may adopt as interim rates pending a hearing on the merits of company specific data. These rules have been stayed by the recent decision of the Eighth Circuit Court of Appeals. Thus, they no longer have a legal effect in the current arbitrations.

One thing that was most troubling about the FCC's First Report is that it established "default proxy rates" for wholesale services and unbundled elements for potential adoption as interim rates pending a hearing on the merits. GTE is very concerned with such a proposal. First, as now apparently confirmed by the Eighth Circuit, the FCC improperly assumed the State's rate-setting function and exceeded its statutory authority. Second, we believe the FCC's default rates are erroneous. And while AT&T may disagree with us, we are entitled to a hearing on the merits as well as an opportunity to present our case *before* rates can be imposed upon GTE. In fact, when the FCC for its own part denied the Motion for Stay requests filed by GTE, SNET and U.S. West, even it acknowledged at ¶ 27 that the proxy prices must be replaced with cost studies when they become available and that the appropriate prices may exceed the proxy ceiling. Of

course, the FCC's denial of the stay motion has now been reversed, and its proposed default proxy rates have no effect at this time.

A related concern is that the recombining of unbundled elements contemplated by the FCC Order would allow bypass of access charges and also allow avoidance of the appropriate resale pricing standards. In addition, the FCC's Order violates the intent of the Act not to change the level and application of carrier access charges. For example, the Order arbitrarily sets end office switching prices at the proxy range of 2 to 4 mills, and it arbitrarily reduces the residual interconnection charge (RIC) to three-quarters of its former level. As a further example, it established without hearing or cause a sunset period for application of carrier common line charges and the three-quarters of the RIC.

Along these same lines, I would like to note that in my experience, regulatory bodies have devoted more time to general rate proceedings and other, more "common" regulatory matters than to this kind of proceeding, where the Commission must resolve fundamental issues resulting from the reorganization of an entire industry. We recognize that the time lines are imposed by federal law, not State Commissions, but we need to ensure that the fundamental issues -- such as those relating to pricing and costing -- receive the attention they deserve.

**Q. SHOULD THE FCC'S PROXY RATES BE IMPOSED ON GTE ON AN INTERIM BASIS WHILE THESE ISSUES ARE BEING CONSIDERED?**

A. The Court of Appeals' decision staying the FCC's rules mandates that they cannot be. Even absent this decision, the proxy rates should not be imposed on GTE on an interim basis. As demonstrated by other witnesses, the default rates are too low to cover GTE's costs. Were the FCC's default rates used even in the interim, there can be no mechanism fashioned to fix the problem after the fact. "Truing up" rates is not an adequate solution. If unbundled rates are set at levels below cost, new entrants will have the ability to attract more customers than they otherwise would be capable of attracting away from GTE. Once this excessive market share loss occurs, it would be impossible for the State to correct for the problem from a customer perspective. In other words, while it is conceivable that the State Commission could order retroactive treatment from a revenue perspective, the market cannot be retroactively corrected. GTE would be irreversibly harmed by those rates, even if the Commission allowed for a retroactive "true-up" mechanism. For all these reasons, and for the reasons set forth in GTE's Arbitration Brief & Response, GTE believes that the FCC's proxy rates should not be applied.

**Q. MAY THE COMMISSION ADOPT RATES ON AN INTERIM BASIS AND, IF SO, DOES THE COMMISSION HAVE THE AUTHORITY TO APPROVE A**

**TRUE-UP MECHANISM TO ACCOMMODATE DIFFERENCES IN FINAL RATES FROM THOSE IMPLEMENTED ON AN INTERIM BASIS?**

A. Yes, the Commission has such authority, provided that it adopts GTE's proposed rates as the interim rates. If the Commission uses AT&T's proposed rates, which the evidence will show to be far below GTE's costs, and later orders a true-up to compensate GTE, the Commission will be effecting the same unconstitutional taking that the FCC's proposed pricing rules committed. As I discussed earlier, those pricing rules, including the default proxy rates, were stayed by the United States Court of Appeals for the Eighth Circuit. Moreover, such a low interim rate, even with a true-up, would cause irreparable harm to GTE's market share, business reputation and good will as I already explained.

I want to make clear, however, that even GTE's proposed rates do not reflect all of GTE's costs, including, for example, GTE's stranded investment. This issue is addressed in GTE's Economic Report (along with the need to rebalance rates). GTE strongly believes it is entitled to recover all of its costs, and this position was an important part of GTE's Motion to Stay the FCC's First Report and Order. Therefore, any order of this Commission or any agreement between the parties must permit GTE recovery of all its costs.

**Q. HAS GTE PROPOSED ITS OWN PRICES FOR WHOLESALE SERVICES, UNBUNDLED ELEMENTS, AND INTERCONNECTION?**

A. Yes, it has. However, the prices for these network elements are not compensatory due to GTE's current distorted rates. Wholesale rates and retail rates must be consistent and rational for all the rates set. Yet, GTE's wholesale rates for unbundled elements reflect market considerations, while GTE's retail rates were set with certain public policy goals in mind, most notably the goal of universal service. These goals allowed prices for some services to be set below their economic costs, while other services were priced far above costs as a source of contribution for the below-cost services. Other examples of distorted rate making policy goals included statewide rate averaging and class of service pricing. As long as GTE was the single provider, the public policy goals could be achieved without harm to the Company or its customers.

Now, however, competition has been introduced in the local exchange market. In that event, there arises a mismatch between, on the one hand, the pricing methodology historically used for determining retail and wholesale rates (where rates will not uniformly reflect costs) and, on the other hand, the cost-based pricing required by the Act for unbundled elements and interconnection.

For this reason, GTE respectfully requests that the Commission move expeditiously to establish a uniform and consistent set of pricing policies that can be applied to the pricing of all of GTE's services -- retail, wholesale, and unbundled.

## Background on AT&T Negotiations

**Q. WOULD YOU BRIEFLY DESCRIBE THE HISTORY OF GTE'S NEGOTIATIONS?**

A. Yes. The parties spent many months negotiating hundreds of issues. The parties' efforts were reflected in a comprehensive five-part matrix, which the parties used to outline their positions and describe the status of each issue. If the status column was shown as "closed," the parties reached agreement based on the position outlined in the GTE column. If the status of the item was shown as "open," the parties failed to reach agreement. Not surprisingly, the parties disagree on the fundamental issue of pricing methodology, and this core issue must be resolved here.

**Q. PLEASE ELABORATE ON HOW THIS MATRIX WAS DEVELOPED.**

A. AT&T initiated the negotiations by issuing a list of nearly 500 "requirements," and GTE and AT&T jointly agreed upon a process to negotiate efficiently these demands. First, we

jointly established three levels of negotiations: (1) subject matter expert (SME) teams to deal with pricing, costing and a multitude of technical and operational issues; (2) a core team, which coordinated the SME team effort and set the agenda and timing on negotiation meetings; and (3) an executive team of which I was a member -- to deal with policy and dispute resolution.

The matrices are divided into five areas: (1) Billing, (2) Features and Services for Local Resale, (3) Pre-ordering/Ordering for Local Resale, (4) Interconnection/Unbundling, and (5) Pay Phone-Local Resale. The parties agreed that these issues could be screened into two separate categories: (1) those issues specifically addressed by the Act; and (2) those issues we considered to be "business" issues not governed by the Act. For example, two of the business-related issues we discussed were GTE's provisioning of voice message and inside wire maintenance to AT&T's customers. Both of these services are "below the line" services for GTE, which means they are not regulated. Again, the parties agreed that these were business issues unrelated to the Act. Now, however, it appears that AT&T wants GTE to resell these services under the avoided cost rate referenced in the Act. We believe these issues, and all other issues of this nature, should not be addressed in this arbitration because, as the parties agreed earlier, they are business-related issues unrelated to the Act's requirements. Of course, if we have misread AT&T's Petition and

supporting documentation and AT&T is not raising these issues in this arbitration, then GTE will discuss these business issues outside of arbitration.

**Q. HOW DID THE PARTIES KEEP TRACK OF THE MANY ISSUES INVOLVED IN THEIR NEGOTIATIONS?**

A. The parties cooperated in developing the matrix I already described above to keep track of all the issues. Many of the items on which the parties had agreed were subject to only two qualifications: (1) that GTE must receive a fair price for its services and property, and (2) that GTE must recover the costs it incurs in accommodating AT&T's requests. Issues that could not be resolved at the SME level were grouped into "like" categories. These categories were then written up in greater detail to reflect each party's position and put into matrix form.

**Q. DID THE PARTIES NEGOTIATE A DRAFT CONTRACT?**

A. No. I want to emphasize that the supposedly "joint draft" contract that AT&T presented with its package of "Relevant Documents" is misleading. Contrary to AT&T's characterization of it, that draft contract does not reflect GTE's positions. When AT&T first presented its proposed contract language to GTE on July 3, 1996, the voluminous terms largely reflected AT&T's initial demands, for the most part ignoring much of the

progress in negotiations to date. The fact that the draft contract was introduced so late in the negotiations, did not reflect issues negotiated up to that point in time, and introduced hundreds of new conditions not previously discussed between the parties, meant that many sections of the contract were never negotiated. However, negotiations have been an on-going endeavor, and as a result, there is a limited amount of language in AT&T's submission with which GTE has agreed, and the underlying dispute on the issues represented by this language has been resolved.

**Q. AT THE TIME OF THE FILING OF YOUR TESTIMONY HAD YOU REVIEWED AT&T'S SUBMITTED "JOINT DRAFT" CONTRACT?**

A. GTE has conducted a preliminary review of AT&T's submission, and two particular concerns exist. *First*, much of the language in AT&T's proposal is shown as "not in dispute", which is very misleading. *Second*, the document submitted by AT&T is several weeks old, during which time the parties have continued their negotiations, so the document does not reflect developments in contract language to date. Thus, under any circumstances, AT&T's proposal could not be approved by the Commission, although it may be the starting point (once it is fully updated) for the parties' negotiations regarding contract language to implement the Commission's arbitration decision once that decision is rendered.

**Q. WHAT ABOUT THE MAJORITY OF THE "JOINT DRAFT" CONTRACT THAT IS PRESENTED BY AT&T AS LANGUAGE NOT IN DISPUTE.**

A. As I stated, AT&T's designation that items are "not in dispute" is very misleading. In reality, with limited exceptions (*i.e.*, the language which the parties recently filed in Alabama, together with a few additions), *all* of the contract language is in dispute. However, in order to streamline the contract negotiation and preparation process, GTE has agreed to utilize the AT&T *form* of the contract, albeit not the AT&T proposed *substance* of the contract. AT&T's filing shows both the agreed Alabama language and much additional language as not in dispute. In reality, everything but the Alabama language (and a few additions) is in dispute, and will *not* appear in the arbitrated agreement *unless* the Commission were to rule in AT&T's favor on each and every issue. In other words, in a number of instances GTE and AT&T have agreed to language implementing particular arbitration decisions, but whether that language is actually used in a specific state depends upon the decisions made by that state's commission. Thus, in contrast to AT&T's proposed language, we have submitted our own contract language which may be utilized in the event this Commission rules in GTE's favor.

**Q. HAVE THE PARTIES CONTINUED TO NEGOTIATE DURING THE ARBITRATION PROCESS?**

A. Yes. Negotiations have taken place in various states during the course of the arbitration process. In Michigan, the arbitrator requested that the parties develop a joint matrix of issues. The purpose of the matrix was to present a side-by-side comparison of unresolved issues and each party's positions on the issues. To satisfy this request, the parties developed a joint matrix of 69 issues that has been used in a number of AT&T/GTE arbitrations. The GTE and AT&T Joint Matrix filed in GTE's response filing reflects the issue descriptions agreed to by the parties in the Michigan process for the issues remaining at the time AT&T filed for arbitration in New Mexico.

**Q. WHAT IS THE CURRENT STATUS OF NEGOTIATIONS BETWEEN GTE AND AT&T AS TO ISSUES AND LANGUAGE IN THE CONTRACT?**

A. Negotiations continue and they may require the modification of a limited number of the provisions that are currently shown as "agreed," depending, of course, on how the Commission rules on the underlying issues. Additionally, we may have come to agreement subsequent to AT&T's filing in this arbitration relative to some of the language shown as "in dispute" (either GTE only or AT&T only). Again, however, this would not be agreement as to the underlying issues, but only as to implementing

language, depending on how the Commission rules. Once the Commission rules, GTE and AT&T can then submit a joint filing showing all of the agreed implementing language, as well as any implementing language which might remain in dispute.

The Commission should note that GTE and AT&T have already made implementing filings in a number of states. In each instance, both agreed-upon implementing language and implementing language which remains in dispute has been submitted to those states commissions. Those commissions will be resolving any remaining language dispute through their contract review processes. In addition, GTE and AT&T have scheduled a mediation under the auspices of the Wisconsin commission in early April in an attempt to resolve, or at least narrow, remaining language disputes.

**Q. IS GTE'S POSITION ON THE RECOMBINING OF NETWORK ELEMENTS SUPPORTED BY THE FCC RULES AND PROVISIONS OF THE ACT?**

A. Section 51.315 of the FCC's rules requires that GTE combine unbundled network elements in any manner without a requirement for the new entrant to provide any facilities of their own. This was clearly not the intent of the Act. When the conference committee reconciled the two bills it clearly distinguished the new entrant's right of access to network elements for the provision of its own facility based telecommunications

services from a new entrant's right to purchase the incumbent's retail services at wholesale rates for the purpose of resale. This is why two distinct pricing standards were adopted in the Act for unbundled network elements and for resale.

## Summary of GTE's Response

**Q. PLEASE SUMMARIZE GTE'S RESPONSE TO AT&T'S PETITION.**

A. In this summary, I have divided the issues into the following major categories: (1) "Most Favored Nations treatment"; (2) wholesale services; (3) unbundled elements; (4) interconnection; (5) "back office" issues such as ordering, provisioning, and systems implementation, functions that take place in the "back office" and that customers are usually not aware of. Finally, I address briefly a number of discrete questions raised by AT&T.

## "Most Favored Nation" Treatment

**Q. IS AT&T ENTITLED TO "MOST FAVORED NATION" TREATMENT ON INDIVIDUAL TERMS AND CONDITIONS?**

A. No. AT&T's position is based on FCC Rule 51.809. The Eighth Circuit's opinion stayed this Rule and described why it inhibits the negotiation process mandated by Congress. Consistent with the Act, GTE is willing to offer any CLEC, including AT&T, the same complete contract negotiated with any other CLEC.

**Q. WHAT IS AT&T'S POSITION ON "MOST FAVORED NATION" TREATMENT?**

A. AT&T is asking for more than is required by the Act. Under the guise of "non-discrimination" in prices, AT&T asserts that it is entitled to "pick and choose" those portions of an agreement between GTE and any other CLEC, and have them inserted into its agreement. In other words, it wants to make sure it gets the same or better terms than any other CLEC. This is contrary to the purposes of the Act.

**Q. SHOULD THE PRICES, TERMS AND/OR CONDITIONS UNDER WHICH SERVICES OR FACILITIES ARE PROVIDED BY GTE TO ONE CARRIER BE MADE AVAILABLE TO ALL CARRIERS?**

A. No. The Act did not intend to vitiate the very negotiation process it created by allowing CLECs to "pick and choose" terms in any and all agreements. Any normal sound business contract would not include a most favored nation clause. To do so would be to

eliminate any and all incentive to the negotiation process and the individuality of the request. Each CLEC is unique and negotiates terms, conditions and rates that are appropriate to its individual requests based on its individual requirements.

**Q. HOW IS AT&T'S PETITION CONTRARY TO THE PURPOSES OF THE ACT?**

A. The Act was designed to encourage negotiation between the parties and specified arbitration as a last resort. Inherent in the negotiation process are trade-offs: I will concede on issue A if you will agree to my position on issue B. Particular issues may be more important to AT&T than for other potential entrants. Thus, the negotiations between AT&T and GTE would produce an agreement that might be quite different than one between GTE and another CLEC.

AT&T does not want to risk the possibility that another CLEC will negotiate what future events will show to be a more favorable agreement with GTE. AT&T wants to pick and choose from various CLEC agreements in order to obtain individual contract terms that are most favorable to AT&T. This, of course, is the very opposite of competition.

AT&T's position -- if accepted by this Commission -- would destroy the negotiation process. Therefore, GTE's position is that each agreement is the product of

comprehensive negotiations. Any party desiring to obtain the forms of another agreement must abide by that agreement in its entirety.

**Q. ARE THERE SPECIFIC ISSUES IN DISPUTE WITH RESPECT TO "MOST FAVORED NATION" TREATMENT?**

A. Yes. AT&T's position is that, as required by the FCC's Order, any price term and/or condition offered to any carrier by an ILEC shall be made available to AT&T on a most favored nation's ("MFN") basis and the ILEC shall immediately notify AT&T of the existence of such better prices and/or terms and make the same available to AT&T effective on the date the better price and/or term became available to the other carrier. The MFN shall apply to any unbundled element or service (e.g., directory assistance, basic residential service, intraLATA toll, Centrex, call waiting). Exceptions to the general availability of MFN should be very limited and include only volume discounts that reflect only cost savings, term discounts, significant differences in operations support (e.g., unbundled loops with maintenance as compared to unbundled loops without maintenance or unbundled loops conditioned for data as compared to voice grade loops), and technical feasibility (e.g., local switching must be purchased to receive vertical features supported by the switch). If a state commission issues an Order setting a price for all carriers, then AT&T wants an Agreement that will reflect that price as long as that

is the only price offered by the ILEC. If geographic zones are not uniform as applied to all carriers, AT&T wants to choose the lowest price available from the ILEC for each specific area being served by AT&T.

Here again, GTE's position is that each agreement is a negotiated process and thereby constitutes an entire agreement between the parties. A party desiring to obtain the terms of another agreement must abide by the entire agreement.

**Q. ARE THE PARTIES IN DISPUTE WITH RESPECT TO GEOGRAPHICAL DEAVERAGING?**

A. Yes. It is GTE's position that it would be premature to deaverage wholesale rates without also being able to deaverage retail rates -- these rates must be consistent with each other and move together. Therefore, GTE is not proposing to establish (at this time) different rates for elements in at least three defined geographic areas to reflect cost differences (Section 51.507(f)).

## Wholesale Services

**Q. WHAT SERVICES WILL GTE OFFER ON A WHOLESALE BASIS TO AT&T?**

A. GTE will offer all the services it currently offers on a retail basis except for those set forth in the testimony of GTE's wholesale services/avoided cost witness. The services GTE will not offer on a wholesale basis include, for example, below-cost services, promotional services, and services that are already provided on a wholesale basis (e.g., special access sold to carriers and private line services offered predominately to carriers).

**Q. WHY DOES GTE EXCLUDE THESE SERVICES?**

A. Let me first address GTE's position with respect to below-cost services. Under GTE's current rates, certain services are priced below cost. These services receive contributions from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are priced above incremental cost. If GTE were required to offer its below-cost services on a wholesale basis, then other carriers would (1) obtain avoided-cost discounts for both below-cost and above-cost services, and (2) be able to pocket the contributions from the above-cost services that had been used to price the other services below-cost. Accordingly, GTE could not cover its total costs unless these services are excluded from GTE's wholesale offerings or are repriced to cover their costs.

Second, GTE should not be required to offer services such as promotions on a wholesale basis; otherwise GTE would not be able to differentiate its retail services from those of

competing carriers. Put another way, a competitor will be able to offer any service it wants on any terms and conditions it desires to attract new customers, and GTE needs this same flexibility to respond to competition on a retail basis and give its customers more choices.

For example, if GTE offers a special promotion to its customers but is required to provide that same promotion to AT&T on an avoided cost basis, then GTE could never differentiate its offerings from those of AT&T. Additionally, GTE would have absolutely no incentive to develop new promotions and other services that would benefit customers because AT&T could take and use them for its own marketing and economic advantage. In fact, GTE could never differentiate its offerings from AT&T's. This result is contrary to the purpose of the Act by limiting choices to customers. The Act should be implemented in a manner that allows all carriers to respond to competition, including GTE.

**Q. HOW SHOULD THE SERVICES GTE OFFERS ON A WHOLESALE BASIS BE PRICED?**

A. These services should be priced as follows: Retail price minus GTE's actual avoided cost, plus the wholesale costs GTE incurs, plus opportunity cost. GTE's resale/avoided cost

witness describes GTE's avoided cost methodology whereby costs are excluded on a work-element basis as opposed to using broad account categories. In this way, GTE's methodology captures GTE's true avoided costs, in accordance with the Act's requirements.

**Unbundled Elements**

**Q. PLEASE DESCRIBE THE UNBUNDLED ELEMENTS GTE WILL PROVIDE TO AT&T.**

A. GTE will offer on an unbundled basis the following:

(1) the loop, which is, in general, the transmission facility which extends from a main distribution frame to the customer premises;

(2) the port, which, in general, is the line card and associated peripheral equipment on a GTE end office switch that serves as the hardware termination for the customer's exchange service on that switch, generates dial tone and provides the customer a pathway to the public switched telecommunications network;

(3) transport, by which I mean the transmission facility which extends from a main distribution frame (MDF) to either another MDF or a meet point with transport facilities of AT&T (unbundled transport is provided under rates, terms and condition of the applicable tariff);

(4) signaling, which in general is SS7 signaling and transport service in support of AT&T's local exchange service; and

(5) certain databases in accordance with the rates, terms and conditions of the applicable switched access tariff.

This description of unbundling means that AT&T may subscribe to and interconnect to whichever of these unbundled elements it chooses, and may combine these unbundled elements with any facilities or services that AT&T may itself provide, pursuant to the following terms: first, the interconnection shall be achieved by expanded interconnection/collocation arrangements AT&T shall maintain at the wire center at which the unbundled services are resident; second, that each loop or port element shall be delivered to AT&T's collocation arrangement over a loop/port connector applicable to the unbundled services through other tariffed or contract options; and third, AT&T shall

combine unbundled elements with its own facilities but shall not recombine GTE unbundled elements.

**Q. GTE DOES NOT PROPOSE TO UNBUNDLE ITS SWITCH. PLEASE EXPLAIN.**

A. GTE will provide the port, as I described above. "Unbundling the switch" is a term coined to describe a-la-carte access to each switch function and feature. There are several problems with this approach. First, such unbundling is not technically feasible at this time, and it ignores the limitations on switch capacity. Second, it ignores the tremendous cost that would be associated with trying to develop these features into a-la-carte menu selections; they currently are not configured in that manner. Third, AT&T would be able to avoid paying appropriate access charges.

**Q. AT&T WANTS TO BE ABLE TO OBTAIN UNBUNDLED ELEMENTS FROM GTE AND THEN REASSEMBLE THEM TO OFFER END-TO-END SERVICE. WHAT IS GTE'S POSITION ON THIS ISSUE?**

A. As I alluded to earlier when describing the nature of AT&T's access to the GTE unbundled elements, GTE strongly believes that AT&T should not be permitted to unbundle and then reassemble GTE's network. Such a proposal by AT&T would render

meaningless the Act's required distinction between unbundled elements and wholesale services -- that they be priced under different cost methodologies.

**Q. HOW SHOULD THE PRICES FOR UNBUNDLED ELEMENTS BE SET?**

A. The prices should be cost-based, as required by the Act. They should be set in a manner to allow recovery of GTE's actual costs of its actual network and should not be based on the theoretical costs of a network that has never been built.

GTE has proposed a pricing methodology that meets the Act's requirements and that allows prices to be set by the market as competition develops. This methodology is discussed in detail in the Economic Report included in our Response.

## Interconnection

**Q. PLEASE DESCRIBE GTE'S POSITION ON THE APPROPRIATE PRICING OF INTERCONNECTION.**

A. GTE's position on all pricing matters is that the Company should be given the opportunity to recover costs incurred in the operations of the Company from the "cost-causers." Sections 251(b)(5) and 252(d)(2) of the Act set forth the standard for

establishing reciprocal compensation arrangements. These standards provide for the mutual and reciprocal recovery of each carrier's costs, calculating such amounts on the basis of the additional costs of terminating calls originated by the other carrier. A bill-and-keep arrangement is inconsistent with these standards unless costs of the two carriers are symmetrical and the volume of traffic terminated on each other's network is approximately equal.

## "Back Office" Issues

**Q. PLEASE DISCUSS GTE'S POSITION ON ISSUES SUCH AS OPERATOR SUPPORT SYSTEMS, BILLING, PROVISIONING, MAINTENANCE, SYSTEMS INTERFACES, AND OTHER "BACK OFFICE" ISSUES.**

A. GTE believes that many of these issues need to be approached on an industry-wide basis, especially as they relate to GTE, which operates in 28 states. System interfaces are an important issue not just for AT&T but for all competitive carriers that want to interconnect with GTE. For example, GTE uses a standard, nationwide billing system, and it would not be appropriate for each state to establish unique interface standards that simply will not work in a single system that serves many states and many competitive carriers. For this reason, GTE believes these back office issues are best resolved in an

industry-wide setting or workshops after the fundamental issues of pricing and costing are resolved on a state-specific basis. A key issue that unites all of these issues is the very important element of cost. As, and when, changes are to be made to satisfy other carriers' particular desires, the carrier causing the change -- in this case AT&T -- must pay for the cost of making the change.

The issues relating to specific back office functions and systems are discussed in the testimony of various GTE witnesses in this arbitration. GTE and AT&T have also agreed, in large measure, to specific implementing language with respect to these issues. Such language appears in Attachments 5 (Maintenance), 6 (Billing) and 7 (Customer Usage Data) of the proposed contract, and corresponding sections of the Main Agreement, submitted by AT&T.

**Q. WHAT ARE THE APPROPRIATE CONTRACTUAL PROVISIONS FOR LIABILITY AND INDEMNIFICATION FOR FAILURE TO PROVIDE SERVICE IN ACCORDANCE WITH THE TERMS OF THE ARBITRATED AGREEMENT?**

A. GTE's contracts with AT&T must include the standard provision that limits GTE's liability to the charges associated with the time out of service. If AT&T wishes to cut

back limitations of liability in its contracts with GTE, this provision must be negotiated. In such negotiations, and as a consequence of any such cutback, the prices for services and elements will be forced upward to account for the potential liability that the parties may agree upon. This question simply addresses risk-shifting, and as with every contract, the party that bears increasing amounts of risk necessarily must cover the cost of that risk by pricing the products and service accordingly. If an ALEC wants a comprehensive insurance policy, it cannot be done without GTE's agreement and the ALEC's payment for such insurance.

In order to determine the appropriate contractual provisions for liability and indemnification, one must know precisely what is being provided under the agreement. GTE should not be required to meet differing quality standards for different wholesale customers, or to meet standards different than those established by a commission for GTE or those adhered to by GTE in its regular course of business. Accordingly, GTE should not be required to indemnify any ALEC for any and all losses purportedly associated with the features or services GTE provides.

What is more, the rates and cost studies presented by GTE in this arbitration do not include the costs of insuring against an ALEC's risk of doing business.

**Q. MAY THE INTERCONNECTION AGREEMENT ULTIMATELY ACHIEVED BETWEEN GTE AND THE PETITIONING ALECs BE MODIFIED BY SUBSEQUENT TARIFF FILINGS?**

A. Yes. Tariffs will continue to be filed from time to time pursuant to the Commission's rules and requirements. The Commission should not be hamstrung from having full authority to review and approve those tariffs at the time they are filed based upon all the considerations pertinent at that time, including the public interest and the competitive nature of the market.

**Q. AS A WHOLESALE VENDOR OF SERVICES, SHOULD GTE BE REQUIRED TO PROVIDE ADVANCE NOTICE TO ITS WHOLESALE CUSTOMERS OF CHANGES TO GTE'S SERVICES?**

A. Yes. This issue of notification needs to be addressed in three categories of changes. First, changes to existing service, such as price changes or discontinuance of an offering; second, deployment of new technology; and third, network changes, such as new NXX's, end-office homing arrangements, and NPA splits. GTE is prepared to give notification to ALEC customers for these types of changes in specified time frames.

GTE and AT&T have agreed to contract implementing language with respect to the provision of notice. This language appears in Section 3.3 of the proposed Main Agreement submitted by AT&T.

**Q. PLEASE DESCRIBE IN WHAT MANNER GTE WILL PROVIDE NOTIFICATION OF CHANGES TO EXISTING SERVICES AND IN WHAT TIME FRAME.**

A. For changes to existing services, GTE will file applicable tariffs with State Commission. A tariff filing is, in purpose and effect, a public notification. That is, all ALECs have equal access to the Commission and will have notice of changes upon filing of the tariff. Typically, tariff filings occur prior to the effective date of the tariff. The period between the filing date and the effective date therefore would be the advance notification period. Because the PSC controls the approval process and time line associated with tariff filings, GTE believes this is an appropriate method of providing advance notification of changes to existing services.

**Q. WHY COULDN'T GTE INFORM ALECs OF UPCOMING FILINGS AND THEIR ASSOCIATED DETAILS PRIOR TO THE FILING DATE?**

A. Many times, the specific details of a filing are not known to GTE much more than a day or two prior to the actual filing. In today's market, where service development cycle times are constantly being compressed, details regarding ordering, billing, feature availability, and price level are determined literally days or hours before a filing. It would be impossible to anticipate all aspects of a filing days in advance, much less months in advance, of the actual filing itself.

**Q. PLEASE DESCRIBE IN WHAT MANNER NOTIFICATION FOR THE DEPLOYMENT OF NEW TECHNOLOGY WOULD BE MADE AND IN WHAT TIME FRAME.**

A. For the deployment of new technology into the network, GTE would be willing to meet periodically with interested ALECs, on an individualized basis, to hold joint planning meetings to discuss the deployment of new technology and the introduction of new service offerings. Local exchange carriers, including GTE, frequently do this now in the LEC/IXC relationship. Utilizing a similar process, advance notification of new technology and new offerings typically occurs six months or more in advance of general availability, although full details of the new technology are not available until later in the planning and development process. For this reason, notice of the deployment of new technology cannot be subject to a standardized rule regarding advance notification, but

must be handled by the two parties on a case-by-case basis. GTE suggests that each ALEC contact its account manager to establish a schedule for planning meetings.

**Q. PLEASE DESCRIBE IN WHAT MANNER NOTIFICATION FOR NETWORK CHANGES WOULD BE MADE AND IN WHAT TIME FRAME.**

A. Notification already exists today in GTE's local exchange company-IXC relationship. GTE routinely sends information pertaining to a number of network changes to many IXC's, AT&T included, regarding, for example, equal access conversions, NPA/NXX additions, NPA splits, CLLI code changes, and CLLI code assignments. Additionally, GTE provides to many IXC's a network activity schedule which includes equal access cut dates, C.O. conversion cut dates, intraLATA equal access conversion schedules, new host/remote relationships, and tandem re-homes.

**Q. WOULD GTE AGREE TO MAKE THIS INFORMATION AVAILABLE TO REQUESTING ALECs?**

A. Yes. Although many small ALECs may not desire all of the information that GTE typically provides to large carriers such as AT&T, GTE would be willing to provide the data mentioned in my last answer to ALECs who desire to do business with us.

**Q. SHOULD GTE BE REQUIRED, VIA THE CONTRACT OR COMMISSION ORDER, TO IMPLEMENT A PROCESS AND STANDARDS THAT WOULD ALLOW EVERY INTERCONNECTING ALEC TO SET ITS OWN STANDARD OF SERVICE TO WHICH GTE WOULD BE HELD WHEN RENDERING SERVICES FOR RESALE, INTERCONNECTION, OR UNBUNDLED NETWORK ELEMENTS?**

A. GTE and AT&T have agreed to service quality standards to be implemented in each area in which they do business together as an ILEC and an ALEC. These standards appear in Attachment 12 of the proposed contract and are referenced in Section 11 of the Main Agreement submitted by AT&T. (GTE's service copy of the proposed contract omits page 1 of Attachment 12, but GTE believes that this is an inadvertent omission and that AT&T has not altered Attachment 12. In addition, the parties have agreed to update Section 11.3 of the Main Agreement.)

**Q. DOES GTE HAVE A POSITION ON THE TERM OF ANY AGREEMENT WITH GTE AND AT&T?**

A. Yes. GTE and AT&T have agreed to a three year term, with the option of one year renewals. The GTE-AT&T agreed-upon implementing language should appear in

Section 2 of the proposed Main Agreement which AT&T submitted, but this section needs to be updated by AT&T to reflect this agreement.

**Q. AT&T HAS SOUGHT INDEMNITY FOR SO-CALLED UNBILLED AND UNCOLLECTED REVENUE. WOULD YOU EXPLAIN THIS ISSUE AND GTE'S POSITION?**

A. AT&T wants GTE to ensure that AT&T receives all revenues it expects to receive from traffic, regardless of how the traffic was interrupted. AT&T's theory apparently is that because GTE is the ILEC whose system AT&T wants to pick apart in order to rebuild a system for itself, then any system fault will necessarily be caused by GTE. AT&T's proposed definition of GTE's liability, i.e., GTE is liable for its "own actions in causing, or its lack of actions in preventing" AT&T's lost revenue from work errors, software alterations, or unauthorized attachments to the loop, is the equivalent of strict liability. If AT&T wants GTE to indemnify it, then AT&T should pay, not customers.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

A. Yes.

# EXHIBIT 5

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

| | |
|---|---|
| In the Matter of the Petition of AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., For Arbitration of Interconnection, Rates, Terms and Conditions with GTE NORTHWEST INCORPORATED, Pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996. | DOCKET NO. UT-960307 |

# AT&T'S REQUEST FOR APPROVAL OF INTERCONNECTION AGREEMENT, WITH OBJECTIONS AND REQUESTS FOR MODIFICATIONS OF THE RECOMMENDATIONS OF THE ARBITRATOR/DECISION MAKER

DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1505 Fourth Avenue
Seattle, WA 98101-1688
(206) 622-3150

language proposed by GTE sets forth the 70%/30% split discussed above.

Finally, the formulae in Sections 43.3.5.1 and 43.3.5.2, in the event they are accepted by the Commission, should be modified to incorporate an interstate/intrastate access revenue split since such rates often significantly differ. Further, audit procedures for data verification would need to be established.

In conclusion, AT&T requests that the Commission resolve this conflict by striking the GTE proposed language in Sections 43.3.5, 43.3.5.1 and 43.3.5.2 adopted by the Decision Maker. In the alternative, AT&T requests that the Commission modify these sections so that they make sense and reflect AT&T's concerns.

**VII. ADDITIONAL MATTERS**

**A. Signatures.** AT&T seeks confirmation from the Commission that both AT&T and GTE shall execute the Agreement upon its approval by the Commission. At page 31 of the Second Decision, the Decision Maker clouded this issue, stating:

> If GTE declines to sign, there will be only one signature and AT&T can simply keep the copy it executes... On the other hand, if the Commission decides it wants to require GTE to sign, the Commission can address the language issue in its approval Order.

AT&T believes that execution of the Agreement by both parties is appropriate and requests that the Commission require such execution by both parties. GTE has executed the signature pages of interconnection agreements with AT&T in California, Hawaii and



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Seattle, Washington 98101-1688

Florida at the insistence of the Commissions in those states, although GTE added a further disclaimer to the signature pages of those agreements. See Appendix A to this Request.

**B. Consequential Damages.** AT&T objects to the Decision Maker's deletion of provisions making either party liable to the other for consequential damages in the case of **willful misconduct, gross negligence**, or actions which result in **bodily injury, death** or **damage to personal property**. Second Decision, p. 22-23. The absence of this language is contrary to the public interest. It destroys the economic incentives that otherwise induce an ILEC such as GTE to abide by the terms and conditions of the Agreement. Without this language, an intentional breach of the contract would not be adequately punished. AT&T requests that the Commission modify Section 10.3 of the Agreement to include the language proposed by AT&T on May 2, 1997.

**C. Arbitrated Vs. Negotiated Language.** Attached as Exhibit A and Exhibit B to the Agreement are two lists drafted by GTE describing the Agreement language GTE believes is negotiated as opposed to arbitrated. Exhibit A is the schedule drafted by GTE for this filing of the Agreement, and is the one submitted by the parties to the Commission to delineate arbitrated versus negotiated language. Exhibit B is the list drafted previously by GTE for GTE's March 4 filing of the Agreement.



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Seattle, Washington 98101-1688

The parties have not been able to fully agree on which provisions of the Agreement are arbitrated as opposed to negotiated. AT&T believes that many other provisions besides those listed in the exhibits are negotiated. However, the parties do agree that all provisions listed on Exhibit A are negotiated provisions, and if necessary for approval of the Agreement by the Commission, AT&T will not dispute the exclusion of other provisions that it believes were also negotiated. However, AT&T wishes to note that over twenty provisions depicted as "negotiated" by GTE on Exhibit B (prepared for GTE's March filing) that have not changed since that filing, do not appear on Exhibit A (prepared by GTE for this filing). AT&T fails to understand how provisions of the Agreement characterized as purely negotiated by GTE only three months ago have somehow transformed to another status. AT&T believes it would be appropriate for those provisions to be added to Exhibit A and to be reflected thereon as "negotiated" provisions. The relevant provisions are Sections 3.1, 3.2, 3.3, 3.4, 4, 9.1, 9.2, 10.1, 11.1, 11.2, 12.2, 13.2, 14, 18 (now 18.1), 21, 22.1, 22.2, 22.3, 22.4, 22.5, 22.6, 23.5, 23.7, 23.18, 23.19.1, 23.19.2, 25.1.4, 25.2.

## VIII. CONCLUSION

Based on the foregoing, AT&T respectfully asks the Commission to approve, modify and clarify the proposed interconnection agreement as argued in this brief.

DATED this 23rd day of June, 1997.

DAVIS WRIGHT TREMAINE LLP
Attorneys for AT&T Communications
of the Pacific Northwest, Inc.

By _____
Daniel M. Waggoner
WSBA No. 9439
Alan G. Waldbaum
WSBA No. 24493

Maria Arias-Chapleau
Richard Thayer
Susan D. Proctor
AT&T Communications of the
Pacific Northwest, Inc.
1875 Lawrence Street, Room 1575
Denver, CO 80202

In witness whereof, the Parties have executed this Agreement through their authorized representatives.

| GTE California Incorporated** | AT&T Communications of California, Inc. |
|---|---|
| By: _____ Signature | By: _____ Signature |
| Donald W. McLeod Name | Name |
| Vice President-Local Competition/Interconnection Title | Title |
| 1-23-97 Date | Date |

**GTE California does not consent to this purported agreement (which does not comply with the federal Telecommunications Act of 1996) and does not authorize any of its representatives to consent to it. The signature of a GTE representative has been placed on this document only under the duress of an order of the Public Utilities Commission of the State of California requiring such signature.

In witness whereof, the Parties have executed this Agreement through their authorized representatives.

| GTE FLORIDA INC. | AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. |
|---|---|
| By: _____ Signature | By: _____ Signature |
| Donald W. McLeod Name | _____ Name |
| Vice President-Local Competition/Interconnection Title | _____ Title |
| June 5, 1997 Date | _____ Date |

** GTE Florida Inc. does not consent to this purported agreement (which does not comply with the Federal Telecommunications Act of 1996) and does not authorize any of its representatives to consent to it. The signature of a GTE representative has been placed on this document only under the duress of an order of the Public Service Commission of the State of Florida requiring such signature.

**In witness whereof, the Parties have executed this Agreement through their authorized representatives.**

| GTE Hawaiian Telephone Company Incorporated** | AT&T Communications of Hawaii, Inc., |
|---|---|
| By: _____ Signature | By: _____ Signature |
| Donald W. McLeod Name | Name |
| V.P.-Local Competition and Interconnection Title | Title |
| Date | Date |

**GTE Hawaiian Telephone Company Incorporated does not consent to this purported agreement (which does not comply with the federal Telecommunications Act of 1996) and does not authorize any of its representatives to consent to it. The signature of a GTE representative has been placed on this document under duress of an order of the Public Utilities Commission of the State of Hawaii requiring such signature.**

Exhibit A



## RIDERS AND COMMENTS FOR WASHINGTON

## LIST OF PURELY NEGOTIATED PROVISIONS IN AT&T 6/30/97 FILING:

General Terms and Conditions Document:

Cover page
Recitals 1 through 5
Scope, Intent and Definitions

Sections:
1
2
5
8.9
8.10
8.11
10.4
12.1
15
16
17.1
17.2
17.3
17.4
17.5
17.6
17.7
17.8
19
19.1
19.2
19.3
19.4
19.5
19.6
19.7
19.8
19.9

## WASHINGTON COMMENTS

19.10
19.10.1
19.10.2
19.10.3
19.10.4
19.10.5
19.10.6
19.10.7
19.10.8
19.10.9
20.1
20.2
23.1
23.2
23.4
23.6
23.10
23.11
23.13
23.14
23.16
23.17
23.20
25.6
27.1
27.2
27.3
27.4
28.4

Attachment 1: In its entirety.
Attachment 6: In its entirety.
Attachment 6A: In its entirety.
Attachment 6B: In its entirety.
Attachment 6C: In its entirety.
Attachment 10: In its entirety.
Attachment 12: In its entirety.

Exhibit B

## RIDERS AND COMMENTS FOR WASHINGTON

## LIST OF PURELY NEGOTIATED PROVISIONS IN AT&T 3/4/97 FILING:

General Terms and Conditions Document:

Cover page
Recitals 1 through 5
Scope, Intent and Definitions

Sections:

1 (except for last sentence)
2 (term agreed to be 3 years and have subsequently agreed to different language for this provision; GTE believes that the parties have reached agreement on the "additional term" provision of this section, but GTE is waiting for a definitive agreement from AT&T.)

3.1
3.2
3.3
3.4
4
5 (Parties have subsequently agreed section heading to read "Section 252(i) Election")
6 (except for third sentence)
9.1
9.2 (Parties have subsequently agreed on language for this provision)
10.1
10.2 (except for "(i)" in line 3 and everything after "plus (ii) and . . . " in line 5.
10.3 (only first sentence)
10.4
10.5 (except for bolded or double underlined words in the Washington 2/7/97 draft)
11.1
11.2
11.5 (except for ", prorated in a competitively neutral manner," in line 4)
12.1
12.2
13.1 (except for "or")
13.2
14
15
16

17.1
17.2
17.3
17.4
17.5
17.6
17.7
17.8
18
19
19.1
19.2
19.3
19.4
19.5
19.6
19.7
19.8
19.9
19.10
19.10.1
19.10.2
19.10.3
19.10.4
19.10.5
19.10.6
19.10.7
19.10.8
19.10.9
20.1
20.2
21
22.1
22.2
22.3
22.4
22.5
22.6
23.1
23.2
23.4
23.5
23.6

23.7
23.8 (as revised per 3/3 negotiations)
23.10
23.11
23.12 (except for all language after "provided, however . . ." beginning on line 6)
23.13
23.14
23.16
23.17
23.18
23.19.1
29.19.2 (as revised per 3/3 negotiations to correct grammatical error)
25.1.4
25.2
25.3 (except for all language after "Agreement by AT&T:" in line 4)
25.6
26.5 (last sentence only)
27.1
27.2
27.3
27.4
28.4 (except for first paragraph)
37.2 (except for first sentence)
41.2 (last two sentences only)

Attachment 1: In its entirety.

Attachment 6: In its entirety.

Attachment 6A: In its entirety.

Attachment 6B: In its entirety.

Attachment 6C: In its entirety.

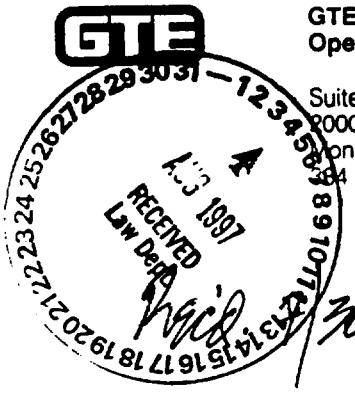
Attachment 7: In its entirety except for Section 1.1. (exception applies to WA only)

Attachment 10: In its entirety.

Attachment 12: In its entirety.

# EXHIBIT 6

Stephen R. Mixson
State Manager
External Affairs




**GTE Telephone Operations**

Suite 203
2000 Interstate Park Drive
Montgomery, AL 36109
334 277-1585

End of day - 7/30/97 - RSR
Mail: L. Long, Esq.

July 30, 1997

Mr. Walter L. Thomas, Jr.
Secretary
Alabama Public Service Commission
P. O. Box 991
Montgomery, Alabama 36101-0991

Re: Docket No. 25704 - In Re: Petition by AT&T Communications of the South Central States, Inc., for arbitration of certain terms and conditions of a proposed agreement with GTE South Incorporated and Contel of the South, Inc., concerning interconnection and resale under the Telecommunications Act of 1996

Dear Mr. Thomas:

Enclosed for filing in the above matter are an original and ten copies of the Supplemental Comments of GTE South Incorporated and Contel of the South, Inc.

I would be most appreciative if you would bring this filing to the attention of the Commission. Thank you for your assistance in this regard.

Yours truly,

/s/

Stephen R. Mixson

SRM:jf

Enclosures

c: Office of the Attorney General (w/enc.)
AT&T (w/enc.)

STATE OF ALABAMA

PUBLIC SERVICE COMMISSION

MONTGOMERY

| | | |
|---|---|---|
| In the matter of the Petition by AT&T Communications of the South Central States, Inc., for arbitration of certain terms and conditions of a proposed agreement with GTE South Incorporated and Contel of the South, Inc., concerning interconnection and resale under the Telecommunications Act of 1996 | ) ) ) ) ) ) ) | DOCKET NO. 25704 |

**SUPPLEMENTAL COMMENTS OF GTE SOUTH INCORPORATED AND CONTEL OF THE SOUTH, INC. IN RESPONSE TO THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

COMES NOW GTE South Incorporated and Contel of the South, Inc. (collectively referred to hereinafter as GTE or Company), by and through counsel, and submits its Supplemental Comments in this matter.

1. On June 4, 1997, GTE and AT&T Communications of the South Central States, Inc. ("AT&T") filed an agreement (the "Draft Contract") pursuant to an order of the Alabama Public Service Commission ("Commission"), resolving certain open interconnection issues between the parties. The Draft Contract contains disputed language over which the parties continue to disagree. GTE filed its comments regarding the disputed language on June 11, 1997. AT&T also filed comments on the disputed language. The Commission has not yet taken action with regard to the Draft Contract.

2. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit granted, in substantial part, the petitions for review of the Federal Communications Commission's ("FCC")

First Report and Order in CC Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. Iowa Utilities Board v. F.C.C.*, No. 96-3321 (and consol. cases), 1997 WL 403401 (8th Cir., 1997), *vacating in part*, First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996). In so doing, the Court nullified, in substantial part, the rules proposed by the FCC and the commentary set forth by the FCC in the First Report and Order.[1]

3. The Commission's Order in this docket is based, in substantial part, on the now-vacated portions of the FCC's First Report and Order. Similarly, the Draft Contract (dated May 16, 1997) submitted for Commission review under Section 252(e) of the Act is based, in substantial part, on the now-vacated portions of the FCC's First Report and Order. Therefore, the Draft Contract expressly fails to meet the requirements for approval as set forth in Section 252(e)(2)(B) of the Act and must be rejected by the Commission. In the alternative, the Commission could direct the parties to revise the Draft Contract in conformance with the Eighth Circuit's decision and re-submit the revised contract for Section 252(e)(1) review. Approval of the Draft Contract in its current form would be reversible error and would result in nullification of the contract upon judicial review. *See* Section 252(e)(6) of the Act.

4. Attached hereto is: (1) GTE's preliminary analysis of *Iowa Utilities Board* and its recent companion case, *Competitive Telecommunications Association v. F.C.C.*, No. 96-3604, 1997 U.S.App.LEXIS 15398 (8th Cir. 1997); and (2) GTE's preliminary analysis of the Draft Contract's

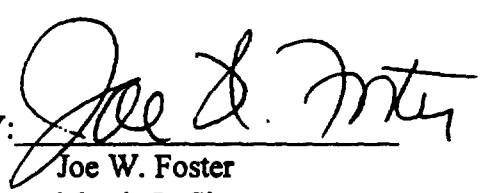
[1]The Eighth Circuit has exclusive jurisdiction to review the First Report and Order, and the Court's opinion is binding nationwide. 28 U.S.C. §§ 2112(a), 2342(1), 2349; 47 U.S.C. §402(a); Order, Judicial Panel on Multidistrict Litigation, Docket No. RTC-31, September 11, 1996. Absent a stay issued by the Court or the Supreme Court, the opinion is effective upon issuance of the Court's mandate to the F.C.C. 28 U.S.C. §§ 2101(f), 2350(b).

provisions which do not conform with *Iowa Utilities Board.*[2]

WHEREFORE, GTE South Incorporated and Contel of the South, Inc. respectfully request the honorable Alabama Public Service Commission to accept these Supplemental Comments and the attachments thereto to assist the Commission in its consideration of the Draft Contract between the parties.

Respectfully submitted this the 30th day of July, 1997.

GTE SOUTH INCORPORATED
CONTEL OF THE SOUTH, INC.

BY: 

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and

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405 South Hull Street
Montgomery, Alabama 36104
(334) 265-1500

Their Attorneys

[2]Due to the urgency of advising the Commission of the Eighth Circuit's recent actions and their impact on the Draft Contract now pending review, the analyses set forth herein are preliminary. GTE, therefore, reserves the right to supplement this filing once it has had an opportunity to more thoroughly analyze the Eighth Circuit's decisions and their impact upon the Draft Contract.

## ANALYSIS OF EIGHTH CIRCUIT'S OPINIONS

The United States Court of Appeals for the Eighth Circuit recently issued two opinions addressing various aspects of the FCC's First Report and Order. These opinions -- *Iowa Utilities Board v. F.C.C.* and *Competitive Telecommunications Ass'n. v. F.C.C.* (*CompTel*) -- support GTE's positions on a number of significant issues with respect to the Telecommunications Act of 1996 and its implementation by state commissions. Specifically, *Iowa Util. Board* confirms (1) the need to establish prices that are not confiscatory; (2) the need, in doing so, to base prices on the cost GTE reasonably will incur using its own network; (3) the need to preserve the Act's distinction between resale and unbundled network elements (UNEs); and (4) several key technical issues, as set forth herein. *CompTel* reaffirms the need to adopt an interim universal service support surcharge (or a similar funding mechanism) that preserves universal service until it is funded explicitly through competitively neutral means.

These preliminary comments summarizes the Court's opinions and explains why several of the Commission's rulings in the AT&T arbitration, Docket No. 25704, are inconsistent with the Court's holdings.

I. Prices Must Not Be Confiscatory.

In *Iowa Util. Board*, the Court vacated all of the FCC's pricing rules, holding that the FCC exceeded its jurisdiction and that the States have the exclusive authority to set prices for interconnection, unbundled elements, and resold services. But the Court recognized that with this authority comes the *responsibility* of establishing prices that

are not confiscatory. Indeed, the Court stressed that if a state commission fails to provide adequate compensation in setting prices, incumbent local exchange carriers (ILECs) will have a federal takings claim against the commissions. The Court noted that under the Act, state commissions are responsible for determining the amount of compensation the requesting carrier must pay the ILEC when the parties fail to agree, and that if the ILEC is denied just compensation, a takings "claim could be presented to a federal district court under the review provisions of subsection 252(e)(6)."

In sum, the Court affirmed what GTE argued in its arbitration: If the Commission does not set compensatory prices, then competitive local exchange carriers (CLECs) will receive a windfall, and the State of Alabama will be required to make up the difference as a result of GTE's takings claim.

II. Prices Must Be Based On GTE's Costs Consistent With Its Actual Network.

The question then becomes, "What is the appropriate compensation?" GTE has argued that it must be compensated for the cost of its *actual* network, not the cost of an unbuilt "superior network", such as the fantasy network created by the Hatfield model. Although *Iowa Util. Board* did not address the merits of the FCC's pricing rules or proxy prices, the decision supports GTE's position. *First*, by emphasizing what is at stake -- the need for compensatory prices that will avoid a taking of property -- the Court made clear that it is the ILEC's costs that matter. Prices that would properly compensate an *imaginary* ILEC, but not GTE, are confiscatory as to GTE. *Second*, the Court's conclusion that ILECs need not provide CLECs with a network "superior" to the ILECs' existing network reinforces GTE's contention that the focus on pricing must be GTE's

existing network. Specifically, the Court struck down the FCC rule that would have required ILECs to provide UNEs "at levels of quality that are superior to those levels at which the incumbent LECs provide these services to themselves." The Court agreed with the ILECs that the Act "implicitly requires unbundled access only to an incumbent LEC's existing network -- not to a yet unbuilt superior one."

This is precisely the point advocated by GTE in the arbitration. GTE is required to sell its *existing* network to CLECs, not a "yet unbuilt superior one." Therefore, GTE's compensation must be determined by reference to GTE's actual network and not on some fantasy network that bears no relation to GTE's costs. The Court's decision on the *type* of network GTE is required to unbundle (*i.e.*, GTE's actual network) strongly supports GTE's position that the *compensation* GTE is entitled to receive must be based on GTE's actual network.

III. The Distinction Between Resale and UNEs Must Be Preserved.

In the AT&T arbitration, GTE showed that the Act draws a distinction between the *resale* of ILECs' services and the *rebundling* of UNEs. Specifically, GTE argued that CLECs should be prohibited from obtaining UNEs in ways that would permit them to replicate an existing GTE service without any additional obligations; otherwise, the only distinction between the offering of services through resale and the offering of services through recombined UNEs would be the price. This Commission, however, rejected GTE's argument and adopted AT&T's position that there is no distinction between resale and UNEs except, of course, for the price.

Two rulings in *Iowa Util. Board* support GTE's position. *First*, the Court vacated

the FCC rule that would have required ILECs to recombine UNEs for the benefit of requesting carriers. The Court held that the Act "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." *Second*, although the Court upheld the FCC rule allowing CLECs to provide telecommunications services entirely through UNEs, it drew several sharp distinctions between the resale of services and the rebundling of UNEs:

> Although a competing carrier may obtain the capability of providing local telephone service at cost-based rates under unbundled access as opposed to wholesale rates under resale, unbundled access has several disadvantages that preserve resale as a meaningful alternative. Carriers entering the local telecommunications markets by purchasing [UNEs] have greater risks than those carriers that resell an [ILEC's] services. A reseller can more easily match its supply with its demand because it can purchase telephone services from [ILECs] on a unit-by-unit basis. Consequently, a reseller is able to purchase only as many services (or as much thereof) as it needs to satisfy its customer demand. A carrier providing services through unbundled access, however, must make an up-front investment that is large enough to pay for the cost of acquiring access to all of the [UNEs] of an [ILEC's] network that are necessary to provide local telecommunications services without knowing whether consumer demand will be sufficient to cover such expenditures. Moreover, our decision requiring the requesting carriers to combine elements themselves increases the costs and risks associated with unbundled access as a method of entering the local telecommunications industry and simultaneously makes resale a distinct and attractive option.

(Emphasis added.)

The Court's insistence that CLECs must themselves bundle the UNEs to provide service, and thereby incur greater risks (and greater opportunities) than those permitted

through simple resale, is central to its decision permitting carriers to provide service by rebundling UNEs. Indeed, the Court stressed that its ruling "that [ILECs are not required] to combine the elements for a requesting carrier establishes that requesting carriers will in fact be receiving the elements on an unbundled basis." (Emphasis added.)

AT&T's position is in direct conflict with the Court's reasoning. According to AT&T, GTE must transfer UNEs on a "unit-by-unit, pre-bundled basis" so that AT&T can provide service in exactly the same manner and with the same, if not fewer, business risks of a pure reseller. Thus, under AT&T's proposal, the *only* difference between pure resale and offering service through UNEs is the price.

AT&T's vice chairman and general counsel, John Zeglis, admitted as much at AT&T's Investment Community Meeting held on March 3, 1997. First, Mr. Zeglis acknowledged that in AT&T's view, rebundling UNEs was just another way of *reselling* GTE's services:

> Another way to resell, and one that figures prominently in our plans, is what we've been calling the unbundled network element. And here if anything we've gotten a better story coming out of the arbitration[s]. . . .

AT&T Investment Community Meeting Transcript at 4, March 3, 1997 (hereinafter "Zeglis Remarks"). Mr. Zeglis then proceeded to explain how the "reselling" of service through UNEs is much more lucrative (and even less risky) than the "reselling" of services through true resale, using AT&T's Pennsylvania arbitration results as an example:

> Good news I guess is that the business case for using this unbundled network platform is going to turn out to be a lot less sensitive to pricing results than TSR [i.e., "Total Service Resale," which is AT&T's shorthand for reselling ILEC services under the Act's resale provisions]. . . .
>
> We're going to start in the state of Pennsylvania, where like other places, TSR margins are modest. This is a good state for us. This is one where our wholesale discount is 25.9 percent. And when you stack the revenue next to the cost, you see that for a consumer averaging 20 dollars of local exchange in Pennsylvania, we have a cost of goods sold of $14.81. Gives you a chance to market a combined local and long-distance package to this customer, gives you a fighting chance perhaps of recovering your marketing and billing and customer care costs incrementally to what you're already doing for long-distance. But it's tight. . . .
>
> But now let's look at the unbundled network element platform in the same state. We'll stay in Pennsylvania. Admit it's a good state for us. We're going to go into high density, low UNE price zones. We're going to buy all the elements, recombine them to make global service out of the elements and assume we're doing this to a consumer that buys $25 of long-distance and five dollars of local toll service per month. And now what we end up with, stacked next to [TSR], is quite a different picture. Our cost of goods sold on that platform is $16.03, slightly above the TSR cost. But our revenue is $33.50, consisting of that same 20 dollars in local that we collect and $3.50 in the interstate subscriber line charge . . . and 10 dollars worth of access, which was otherwise being paid to the local carrier on the 30 dollars of toll this customer was using. So we have widened our margin on the UNE [side] by more than twelve bucks over what we had on the TSR side.
>
> . . . In that case I just bought a $33.50 revenue stream for $16.03 cost of goods sold, a discount of 52%. . . .

Zeglis Remarks, at 5 (emphasis added).

It is obvious from Mr. Zeglis' remarks that the only difference between resale and

AT&T's UNE proposal is the effective discount. Indeed, at one point in his presentation, Mr. Zeglis attempted to come up with at least one example where AT&T would resell service under the Act's resale provisions, but concluded that AT&T would get more of a discount by simply reselling services through the UNE platform:

> None of this by the way is to say we can't make some business out of the TSR side of it. On the TSR side, you still have some very attractive long-distance customers, in this case the same $30 toll customer stacked up on top of that local revenue and that local cost. But now you're still paying access, . . . and you've lost your opportunity at $3.50 for the subscriber line connection recovery. Just another way of showing that you're $13.50 better off on the [UNE] side than you are on the [TSR] side. And you know, this can go on for a long time. We could really have fun. How about a 75 dollar toll customer with five dollars of intrastate, intra-LATA toll? Now you move your cost of goods up to 19 dollars but you move your true local collections to $50. I'm dealing with a 64% discount, as you see, the higher the toll usage the more pronounced advantage of this [UNE] platform.
>
> . . . Clearly, there are huge advantages to that kind of business when you use the unbundled platform.

Zeglis Remarks, at 6 (emphasis added).

Finally, Mr. Zeglis stated that he wasn't very concerned that AT&T's arbitrage opportunities would be affected by the then-pending Eighth Circuit case:

> Look, with all this opportunity, what are the public policy threats to AT&T's going-forward business? One I hear most asked about is the eighth circuit. And sure some national uniformity would be useful . . ., [b]ut most of us are a lot less concerned than what we used to be about what's going to come out of St. Louis.

Zeglis Remarks, at 7.

AT&T guessed wrong. What "came out of St. Louis" is an opinion that draws a

clear distinction between offering services through resale and offering services through the recombination of UNEs. AT&T's unbundling proposal, as reflected in the draft agreement now submitted to the Commission for review under Section 252(e) of the Act runs afoul of the Court's opinion on its face and therefore must be reformed.

GTE proposes to reform the AT&T arbitration agreement to reflect the following principles:

> – When an existing ILEC customer decides to obtain local residential service from a CLEC, and the CLEC decides to provide service by combining UNEs, then the CLEC must do the actual "combining" of the UNEs.
>
> – To preserve the Court's distinction between resale and UNEs, a CLEC providing service through UNEs must do so through a collocation arrangement. GTE proposes to break the link between the main distribution frame (MDF) and the switch line card (port). GTE would then run jumpers from the MDF to the collocation space and from the port to the collocation space. The CLEC would use a cross-connect within the collocation space to perform the actual "combination" of the loop and port. This arrangement allows the CLEC to rebundle the UNEs, and is in fact the only way in which CLECs can perform the actual "bundling" of UNEs in order to provide telecommunications services.
>
> – For repair purposes, GTE would not retain the same obligations for UNEs as it does for resale. With respect to UNEs, GTE shall be responsible for maintaining the integrity and performance of each UNE. The CLEC, however, shall be responsible for the end-to-end performance of the combination of UNEs.

GTE's proposal is consistent with the Court's ruling. *First*, it requires the requesting carrier to rebundle the UNEs. *Second*, it retains the Court's distinction between resale and UNEs by requiring CLECs to enter into a collocation arrangement.

Such an arrangement is, of course, the only way in which CLECs can perform the actual "bundling" of UNEs in order to provide telecommunications services.

If the Commission does not require reformation of the draft agreement, then there is no real distinction between resale and UNEs. If so, then the price should be the same. Put another way, if AT&T does not incur greater *risks* in providing service through UNEs, then it should not be entitled to a lower *price*, and the Commission should require AT&T to pay the same price that results from application of the avoided cost discount. This is precisely the approach taken by the state commissions in Georgia, Tennessee, Louisiana, North Carolina and Wisconsin.

## IV. Unbundling and Interconnection Issues

The Court's decisions on several unbundling and interconnection issues also require significant reformation of the AT&T agreement. These decisions and their effect upon the agreement are discussed here.

### A. *Technical Feasibility*

The Court did not reverse the FCC's definition of technical feasibility, upholding the FCC's position that a determination of technical feasibility "does not include consideration if economic, accounting, billing, space or site concerns." However, the Court did state that "the costs of such interconnection or unbundled access will be taken into account when determining the just and reasonable rates, terms and conditions for these services" and that the ILEC "will recoup the costs involved in providing interconnection and unbundled access." Thus, the Court has made very clear that ILECs are entitled to recovery of costs involved in implementing

interconnection and unbundled access, and that this recovery is a necessary presumption underlying the broad definition of technical feasibility.

Even more significantly, the Court rejected the FCC's presumption that an element must be unbundled if it is technically feasible to do so. The Court pointed out that Section 251(c)(3) of the Act requires access to unbundled elements "at any technically feasible point," but has nothing to do with whether a given element may or may not be unbundled. Accordingly, and at the very least, interconnection agreements should only allow unbundling and access to existing systems. The Commission should reject any provision that attempts to require technically feasible, but currently non-existent, elements or service. Furthermore, interconnection agreements must not include any presumption that any technically feasible element or service should be provided.

B. *Proprietary Elements*

Although the Court upheld the FCC's order regarding access to network elements that are proprietary in nature, it provided some guidance that must be reflected in interconnection agreements. Under Section 251(d)(2)(A) and (B), the Act, ILECs are not required to provide access to proprietary network elements unless such access is "necessary" and if failure to provide access would "impair" the ability of the CLEC to provide services. The Court stated that "the requesting carrier must demonstrate that without access to a particular proprietary element its ability to compete would be 'significantly impaired or thwarted'" and, furthermore, that an ILEC does not have to offer access to proprietary network elements if the CLEC can provide

the same service through non-proprietary elements. Therefore, interconnection agreements must contain limitations regarding proprietary network elements that would prohibit access unless the CLEC meets the above preconditions.

C. *Superior Levels of Quality*

The Court reversed the FCC's determination that an ILEC must, at a CLEC's request, provide interconnection, unbundled network elements, and access to such elements at higher levels of quality than what the ILEC provide to itself. The Court cited the Act, which only requires provision "at least equal in quality," and stated that "this phrase mandates only that quality be equal -- not superior. In other words, it establishes a floor below which the quality of interconnection may not go."

Furthermore, the Court also held that Section 251(c)(3)

> requires unbundled access only to an [ILEC's] existing network -- not to a yet unbuilt superior one. . . . The fact that interconnection and unbundled access must be provided on rates, terms and conditions that are nondiscriminatory merely prevents an [ILEC] from arbitrarily treating some of its competing carriers differently than others; it does not mandate that [ILECs] cater to every desire of every requesting carrier.

(Emphasis added.)

The Court clarified that ILECs should modify their facilities "to the extent necessary to accommodate interconnection or access to network elements." However, it concluded by explicitly rejecting the argument that cost recovery compensates an ILEC for being required to provide superior quality of service, reiterating that the Act "does not impose such a burden on the [ILECs]."

These sections of the Court's opinion have significant implications for the AT&T arbitration agreement under review by this Commission as well as other existing and pending Commission-approved interconnection agreements. Because these agreements impose technical standards, service ordering, unbundling and interconnection requirements that, in many cases, require GTE to provide a higher quality of service or, at the very least, require GTE to implement currently non-existent system and procedures, these interconnection agreements are in conflict with the Court's decision. Accordingly, interconnection agreements must be revised to state that CLECs will receive service at parity, regardless of cost recovery.

Furthermore, any service ordering or implementation obligations on GTE that are not currently used by GTE or that are unnecessary to accomplish interconnection or access to unbundled network elements -- notice requirements, ordering requirements, performance standards or reporting -- must be deleted.

V. An Interim USF Support Mechanism Must Be Adopted.

In *CompTel*, the Court recognized the essential link between cost-based rates for UNEs and the preservation of universal service. The issue presented in that case was whether the FCC violated the Act's cost-based pricing provisions by allowing ILECs to collect, on an interim basis, the Common Carrier Line Charge (CCLC) and 75% of the transport interconnection charge (TIC) for all interstate minutes traversing switches for which interconnecting carriers pay UNE switching element charges. The FCC assessed these charges as a temporary funding mechanism for universal service. CompTel sought to vacate the charges, claiming that they were not related to the cost

of the UNEs and therefore application of the charges violated the Act's cost-based pricing standard.

The Court rejected this argument. The Court recognized that universal service would be adversely affected if the CCLC and TIC charges were not assessed, and that Congress could not have intended such a result. The Court concluded that the application of the CCLC and TIC on an interim basis was lawful:

> To date, the subsidies necessary to achieve the goal [of universal service] have been derived, at least in part, from access charges that are not cost-based, so that long-distance rates have been subsidizing local rates.
>
> * * *
>
> [T]he Act requires the reform of universal service subsidies and not, significantly, abolishment of universal service, even temporarily. Clearly, Congress did not intend that universal service should be adversely affected by the institution of cost-based rates. But the nine-month disparity between the deadline for implementation of cost-based service and the deadline for reform of universal service raises the threat of serious disruption in universal service for those nine months if cost-based service is required before universal service is funded by competitively neutral means. . . .
>
> If the FCC . . . had not instituted an interim access charge of some sort in order to subsidize universal service for the nine months before universal service reforms are complete, we think it apparent that universal service soon would be nothing more than a memory.

In short, the Court, mindful of both the Act's cost-based pricing provisions and its universal service provisions, upheld the FCC's rule that assessed two separate universal service support charges (the CCLC and the TIC) on an interim basis until universal service reforms are completed.

The Court's decision supports GTE's argument that *state commissions* also must adopt an interim universal service funding mechanism to preserve existing *intrastate* subsidies. Today, GTE's intrastate rate structures reflect implicit subsidies under which excess contributions from certain services (*e.g.*, business lines, toll and switched access services) provide support for other services (*e.g.*, local exchange services). These implicit subsidies promote and advance universal service.

Implicit subsidies, however, cannot be maintained in a competitive environment. The FCC acknowledged this problem in its First Report and Order in the Access Charge Reform Docket, released May 16, 1997. The FCC stated, at paragraph 32, that,

> as competition develops, incumbent LECs may be forced to lower their access charges or lose market share, in either case jeopardizing the source of revenue that, in the past, has permitted the incumbent LEC to offer service to other customers, particularly those in high-cost areas, at below-cost prices.

(Emphasis added.) The FCC has thus acknowledged that competitive pricing will jeopardize the current universal service support flows implicit in ILEC rates. The Court affirmed this very point in *CompTel*.

As admitted by Mr. Zeglis, AT&T (and, presumably, all other CLECs) will cream-skim these implicit subsidies by targeting "high density, low UNE price zones." Zeglis Remarks, at 21. By using UNEs in this manner, AT&T admits it will "pay only the costs and don't add [sic] subsidies." *Id.* at 19. The "subsidies" AT&T will avoid are, of course, the very subsidies that support universal service, and represent a true cost to GTE of providing interconnection and network elements, within the meaning of Section

252(d)(1) of the Act.

Even the FCC recognized these cream-skimming opportunities in paragraph 17 of its Universal Service Report and Order, CC Docket No. 96-45, released May 8, 1997:

> In a competitive market, a carrier that attempts to charge rates significantly above cost to a class of customers will lose many of those customers to a competitor. This incentive to entry by competitors in the lowest cost, highest profit market segments means that today's pillars of implicit subsidies -- high access charges, high prices for business services, and the averaging of rates over broad geographic areas -- will be under attack. New competitors can target service to more profitable customers without having to build into their rates the types of cross-subsidies that have been required of existing carriers who serve all customers.

As GTE argued in the arbitration, these strategies by CLECs threaten universal service. Presently, GTE alone is responsible for supporting the policy objective of universal service in those areas in which it operates. As CLECs target and capture the sources of revenue contributions GTE currently uses to accomplish that objective, GTE will be unable to sustain this burden. No company can survive if it is required to provide some services at price levels that are below those that would exist in a rational, competitive marketplace, while it is forced by competition to relinquish the margins on other services that permitted it to provide the supported services. For this reason, an interim universal service support charge must be assessed in addition to the UNE cost-based rates *until* universal service is funded through competitively neutral means. Such an interim charge is consistent with the Court's interpretation of the Act in *CompTel.*

The interim universal service support charge is also mandated by Section 254(f) of the Act. This makes it quite clear that new competitors shall not enter the market

without paying their fair share of the costs of subsidizing universal service. Under Section 254(f), "every telecommunications carrier that provides intrastate telecommunications service *shall* contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation of universal service." 47 U.S.C. § 254(f) (emphasis added). *Iowa Util. Board* affirms the central role of a universal service support mechanism in ensuring fair competition. *Id.*, at n. 34.

## Changes to Alabama AT&T Interconnection Agreement in Response to the 8th Circuit Decision

**General Terms:**

The following sections must be revised as they do not, in their current form, conform with *Iowa Utilities Board*'s holding regarding the combination of network elements. The Court held that the Act does not require ILECs to combine the network elements which are purchased by CLECs on a unbundled basis. *Iowa Util. Board*, at *25. Thus, the Court vacated the FCC Rules at 47 CFR 51.315( c) through (f). *Id.* The following sections must be revised as they would improperly obligate GTE to provide AT&T with combinations of network elements -- an obligation which GTE does not have under the Act. The full text of each section incorporating appropriate revisions appears in Appendix A attached hereto.

General Terms & Conditions: 1, 3.1, 3.2, 3.3, 10.4, 17.1, 18, 23.19.2, 26.2.
Attachment 4: 1.1, 2.1, 2.2, 2.3, 2.5, 2.6, 3.3, 3.8, 4.1, 4.4, 4.5, 6.1.3, 6.1.4, 7.1, 7.2, 7.3, 7.4, 8, 8.1, 8.2, 8.3, 8.4, 9.1.
Attachment 5: 1, 2, 5, 7, 9.4.1, 9.4.2, 9.5.
Attachment 6: 1, 2.1.1
Attachment 6A: 2.1
Attachment 6B: 1, 2.1, 2.2, 2.4
Attachment 12: 1, 3.6.1, 4.1, 5.1, 5.1.1, 5.2
Attachment 12 - Appendix 2: 1.3.1, 1.3.1.1, 1.3.1.2, 2
Attachment 13: 2.2.1, 2.2.2, 3.1
Attachment 14 - Appendix 2: Paragraph 1
Attachment 14 - Appendix 2: Annex 1

Section 9.3:

Over GTE's objections, the Commission in its Order On Interconnection Agreement dated May 5th, 1997, adopted AT&T's proposed language for this section. Although GTE recognizes that the section as adopted by the Commission does not directly conflict with the Court's decision in *Iowa Utilities Board*, that decision further illustrates the reasons for GTE's original objection. AT&T's language calls for modification of the agreement in response to changes in law only when such changes become "final and nonappealable". Yet inclusion of such language can lead to nonsensical results. For example, because the contract currently contains language that conflicts with *Iowa Utilities Board*, the contract will have to be modified accordingly. The adoption of AT&T's language for this section, however, purportedly binds the parties to every provision of the agreement until such time as the decision in *Iowa*

*Utilities Board* becomes "final and nonappealable". AT&T's language could, thus, cause delay lasting months or even longer. GTE proposes that in ordering revision of the Agreement, the Commission order the inclusion of only GTE's proposed language to read as follows:

> "GTE and AT&T further agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements (including the Order) in effect at the time the Agreement was produced. Any modifications to those requirements (including modifications resulting from judicial review of the Order) will be deemed to automatically supersede any terms and conditions of this Agreement that, as a result of such modification, are no longer required by law."

Section 11.5:

The language in this section conflicts with *Iowa Utilities Board* and must be removed in its entirety. The Decision explicitly vacated FCC Rules 51.305(a)(4) and 51.311(c ) which require GTE to provide services superior in quality as requested by AT&T. *Iowa Util. Board*, at *24. In so doing, the Court stated "[p]lainly, the Act does not require incumbent LECs to provide its competitors with superior quality interconnection." *Id.* The Commission cannot now approve this section and bind GTE to a provision which, under proper interpretation of the law, GTE was never required to agree. *See* Order On Interconnection Agreement at Appendix A (approving AT&T proposed language). Moreover, as providing superior quality service is not required under the Court's interpretation of the Act and the FCC Rules, and in contrast to the Commission's resolution of the cost recovery dispute in this section, the rates at which higher quality services will be provided, if at all, must be left to negotiation between the parties. The Commission should order that this provision be stricken. GTE proposes that the following provision appear in its place.

> Service quality and Performance. Each Party shall provide services under this Agreement to the other Party that are equal in quality to that the Party provides to itself, its Affiliates or any other entity. "Equal in quality" shall mean that the service will meet the same technical criteria and performance standards that the providing Party uses within its own network for the same service at the same location under the same terms and conditions.

Additionally, the entire Appendix A to Attachment 2 and the Sections set forth in Appendix B attached hereto must be stricken as each of these provisions set forth technical or other standards which the unbundled network elements must meet which would obligate GTE to provide a higher quality unbundled network element to AT&T than GTE currently provides to itself -- an obligation which GTE does not have under the Act. The Eight Circuit held that under the Act an ILEC is not required to provide

CLECs with superior quality access to network elements than the ILEC provides to itself. *Iowa Util. Board*, at *24.

Section 23.8:

In accordance with *Competitive Telecommunications Ass'n.*, the section should appear in its entirety as follows:

> **"Regulatory Agency Control** - This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the FCC and/or the applicable state utility regulatory commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency. This Agreement is subject to approval of the Commission in accordance with Section 252 of the Act. This Agreement shall not become effective until five (5) Business Days after receipt by the Parties of written notice of such approval; provided, however, that this Agreement shall not become effective until such time as the Commission has (1) put in place a mechanism to provide GTE the opportunity to recover its historic costs, and (2) established a universal service system that is competitively neutral. "Business Day" shall mean Monday through Friday, except for holidays on which the U. S. Mail is not delivered."

Section 23.19.1 & 23.19.2:

These two sections conflict with *Iowa Utilities Board*. See comments to Section 11.5 supra. The provision should be stricken.

Section 31:

Section 31 should be stricken as this section improperly cross-references FCC Rules which have been vacated by the Court. *See Iowa Util. Board*, at n. 38. If the Commission does not strike Section 31, at the very least, the cross-reference to the FCC rules must be corrected such that the section appears as follows:

> "This Part II sets forth the unbundled Network Elements that GTE agrees to offer to AT&T in accordance with its obligations under Section 251(c)(3) of the Act and 47 CFR 51.307 to 51.321 of the FCC Rules, provided that, GTE shall not be obligated to comply with any FCC Rule which has been vacated by any court of competent jurisdiction, including, but not limited to, 47 CFR 51.305(a)(4), 51.311(c), 51.315(c) through (f) and 51.317. The specific terms and conditions that apply to the unbundled Network Elements are described below and in Attachment 2. Prices for Network Elements are set forth in Part V and Attachment 14 of this Agreement."

Section 32.5:

Section 32.5 should be stricken as this section does not conform with the Court's holding regarding the combination of network elements. The Court held that the Act does not require ILECs to combine the network element which are purchased by CLECs on a unbundled basis. In recognition of its holding, the Court vacated FCC Rules 51.315( c) through (f). *Iowa Util. Board*, at *25. Section 32.5 should be stricken as it would improperly obligate GTE to provide AT&T with combinations of network elements -- an obligation which GTE does not have under the Act.

Sections 32.7 & 32.8:

Similar to Section 32.5, Sections 32.7 and 32.8 should also be stricken as each of these sections would improperly obligate GTE to provide combinations of network elements to AT&T in contravention of the Act.

Section 32.9:

Section 32.9 should be stricken in its entirety as it fails to comply with *Iowa Utilities Board* regarding the proper standard to be applied in determining which network elements must be unbundled. The Eighth Circuit held that the standard of "technical feasibility" should not be used to determine which network elements must be offered to the CLEC as unbundled network elements. *Iowa Util. Board*, at *22. In addition, the Court vacated "the portion of 47 CFR 51.317 and the portions of paragraphs 278 and 281 of the FCC's First Report and Order that create the presumption that a network element must be unbundled if it is technically feasible to do so." *Iowa Util. Board*, at n. 30. The Court further emphasized that the Act "requires unbundled access only to an incumbent LEC's existing network -- not to a yet unbuilt superior one." *Iowa Util. Board*, at *24 (emphasis added).

Since the list of network elements to be unbundled by GTE contained in Section 32.9 was incorrectly determined using the "technical feasibility" standard which was struck down by the Court, the Commission must strike Section 32.9 and re-evaluate which network elements must be unbundled by GTE using the Court's standard. In addition, each of the provisions in Attachment 2 will need to be modified or deleted based upon a proper determination of which network element must be unbundled and the extent of such unbundling.

Furthermore, in conformance with Court's holding with regard to proprietary network elements and the scope of unbundled access, *Iowa Util. Board*, at *23 & *24, the following paragraphs must be inserted in place of, or at the end of, Section 32.9:

"Pursuant to 47 CFR 514.317(b), GTE need not provide unbundled access to a

proprietary Network Element if AT&T could offer the same service through use of GTE's non-proprietary Network Elements."

"Notwithstanding anything contained in this Agreement, GTE must provide unbundled access to AT&T only to GTE's existing network and GTE shall not be required to provide AT&T with superior access to Network Elements upon demand."

Section 37.8:

All but the first two sentences of Section 37.8 must be stricken in order to properly recognize the Eight Circuit's vacating of FCC Rules 51.305(a)(4) and 51.31(c) and the Court's holding that under the Act an ILEC is not required to provide CLECs with higher quality interconnection than the ILEC provides to itself. *Iowa Util. Board*, at *24. Section 37.8 should be modified to appear as follows:

"Interconnection provided by GTE shall be equal in quality to that provided by GTE to itself or any subsidiary, Affiliate or other person. "Equal in quality" means the same or equivalent technical criteria, service standards that a Party uses within its own network and, at a minimum, requires GTE to design interconnection facilities to meet the same technical criteria and service standards that are used within GTE's network."

Section 42:

*Iowa Utilities Board* states that "under the Act, an incumbent LEC will recoup the costs involved in providing interconnection and unbundled access from the competing carriers making these requests." *Iowa Util. Board*, at *21. To clarify the obligations of the parties under the Agreement, the following sentence must be added at the end of Section 42 of the Agreement:

"GTE shall recoup the costs involved in providing Interconnection and access to unbundled Network Elements from the competing carriers making requests for such services."

**Attachment 2:**

Attachment 2, Throughout Entire Attachment:

As discussed supra in GTE's comments for Section 32.9 of the General Terms and Conditions, the Eighth Circuit rejected the "technical feasible" standard for determining which network elements an ILEC must unbundle. The Commission must re-evaluate which of GTE's network elements must be unbundled using the proper

standard ordered by the court. After such an evaluation is made, various subsections of Attachment 2 may need to be deleted or modified based upon the Commission's determination of what network elements must be unbundled by GTE using the proper standard.

Attachment 2, Sections 4.2.1.28, 5.1.1, 11.7.2.5 and 12.2:

As discussed above in the comments for Section 32.9 of the General Terms and Conditions, the Court emphasized that the Act "requires unbundled access only to an incumbent LEC's existing network -- not to a yet unbuilt superior one." *Iowa Util. Board*, at *24 (emphasis added). Each of these sections must be modified to reflect that GTE needs to provide access to the various unbundled network elements only to the extent that such access is currently available to GTE. Each of the sections listed above must be modified as set forth below.

Attachment 2, Section 4.2.1.28: In line 5, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "GTE shall assign each AT&T Customer line the class of services designated by AT&T (e.g., using line class codes or other switch specific provisioning methods) and shall route operator calls from AT&T Customer to AT&T operators at AT&T's option. Where technically feasible and currently available, GTE shall route local Operator Services calls (0+, 0-) dialed by AT&T Customers directly to the AT&T Local Operator Services platform, unless AT&T requests otherwise pursuant to Section 28.6.1. Such traffic shall be routed over trunk groups specified by AT&T which connect GTE end offices and the AT&T Local Operator Services platform, using standard Operator Services dialing protocols of 0+ or 0-. Where intraLATA presubscription is not available, GTE will provide the functionality and features within its local switch (LS), to route AT&T Customer dialed 0- and 0+ IntraLATA calls to the AT&T designated line or trunk on the Main Distributing Frame (MDF) or Digital Cross Connect (DSX) panel via Modified Operator Services (MOS) Feature Group C signaling. Where IntraLATA presubscription is available, AT&T Customer dialed 0- and 0+ intraLATA calls will be routed to the intraLATA PIC carrier's designated operator services platform. In all cases, GTE will provide post-dial delay at no greater than that provided by GTE for its end user customers. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act, and in such amounts or levels as determined by the Commission for implementation of such routing."

Attachment 2, Section 5.1.1: In line 1, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "Definition
> Operator Service provides where technically feasible and currently available: (1) operator handling for call completion (for example, collect, third number billing, and manual credit card calls), (2) operator or automated assistance for billing after the customer has dialed the called number; and (3) special services including Busy Line Verification and Emergency Line Interrupt (ELI), Emergency Agency Call, Operator-assisted Directory Assistance, and Rate Quotes."

Attachment 2, Section 11.7.2.5: In lines 2 and 3 replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "When AT&T selects SCE/SMS AIN Access, GTE shall provide for a secure, controlled access environment on-site, and, if technically feasible and currently available, via remote data connections (e.g., dial up, LAN, WAN)."

Attachment 2, Section 12.2: In lines 1 and 2, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "Technical Requirements
> Tandem switching shall provide the following capabilities, where technically feasible and currently available:"

Attachment 2, Sections 3.1.1.2, 4.2.1, 5.1.2.13, 5.1.2.15, 6.2.2 and 8.5.6.5:

Furthermore, to the extent that the Commission does not strike sections 3.1.1.2, 4.2.1, 5.1.2.13, 5.1.2.15, 6.2.2 and 8.5.6.5 as GTE requests in its comment to Section 11.5 of the main agreement set forth above, these sections must be modified to reflect that GTE needs to provide access to the various unbundled network elements only to the extent that such access is currently available to GTE. These sections must be stricken or modified as follows:

Attachment 2, Section 3.1.1.2: In line 9, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

"Special Conditioning Requirements. The Basic Loop will be provided to AT&T at parity with GTE customers and will comply with the specifications noted in this section 3.1, Loop. Transmission of signaling messages or tones not provided by these specifications will be provided to AT&T, as agreed between AT&T and GTE. When placing an order for unbundled Loop and Sub-Loop elements, AT&T will notify GTE of any special requirements. Special conditioning to provide such requirements will be provided on a case-by-case basis, if technically feasible and currently available. AT&T agrees to bear the cost of any such special conditioning. Types of Loops which may require such conditioning include 2W/4W PABX Trunks, 2W/4W voice grade private line and foreign exchange lines, 4W digital data (2.4Kbps through 64Kbps), etc."

Attachment 2, Section 4.2.1: In line 5, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

"GTE shall offer to AT&T unbundled access to all facilities, functions, features and capabilities of its local switches to the extent it is technically feasible and currently available. If AT&T requests access to any facility, function, feature or capability of the GTE local switch that is technically feasible but which requires GTE to make modifications to the switch where such modifications are outside the scope of modifications that have been made in the past and are modifications that the manufacturer of the switch does not, and has not supported, GTE shall immediately seek endorsement from the manufacturer of the switch to make such modifications, and shall promptly notify AT&T that GTE has done so within thirty (30) days of receiving AT&T's request. After obtaining the vendor endorsement, GTE shall provide the unbundled access to the facility, function, feature or capability requested by AT&T. AT&T will reimburse GTE for all costs associated with such modification in accordance with section 251(d)(1) of the Act."

Attachment 2, Section 5.1.2.13: In line 3, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

"GTE shall provide rate quotes and process time-and-charges requests on 0- calls, and shall provide AT&T's rates where technically feasible and currently available. To the extent that the costs of these services are not covered by the underlying element charge, AT&T shall pay such costs."

Attachment 2, Section 5.1.2.15: In line 3, replace "technically feasible" with

"technically feasible and currently available" such that the section appears as follows:

> "Operator Services provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible and currently available, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Operator Services on a switch-by-switch basis, subject to capability and capacity limitations."

Attachment 2, Section 6.2.2: In line 3, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "Directory Assistance Service provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible and currently available, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Directory Assistance on a switch-by-switch basis, subject to capability and capacity limitations."

Attachment 2, Section 8.5.6.5: In line 1, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "Other technically feasible and currently available cross-connects designated by AT&T."

Attachment 2, Section 8.2.11:

The last sentence of Section 8.2.11 must be struck or modified in order to conform Section 8.2.11 with the Eight Circuit's holding that under the Act an ILEC is not required to provide CLECs with superior quality access to network elements than the ILEC provides to itself. *Iowa Util. Board*, at *24. Section 8.2.11 should be deleted or should be modified to appear as follows:

> "For Dedicated Transport provided as a system, GTE shall design the system (including but not limited to facility routing and termination points and facility routing over existing transport facilities between GTE and a second carrier to carry traffic designated for that carrier) according to AT&T specifications. If AT&T requests higher quality specifications than GTE provides to itself, GTE, in its sole discretion, may agree to provide such higher quality specifications, provided that, AT&T shall pay the cost of implementing such higher quality

specifications. "

Attachment 3:

Attachment 3, Section 2.2.10:

The last sentence of Section 2.2.10 must be stricken or modified to conform Section 8.2.11 with the Eight Circuit's holding that under the Act an ILEC is not required to provide CLECs with superior quality access to its network than the ILEC provides to itself. *Iowa Util. Board*, at *24. Section 2.2.10 should be deleted or should be modified to appear as follows:

> "GTE shall provide all ingress and egress of fiber and power cabling to AT&T collocated spaces in compliance with AT&T's cable diversity standards. The specific level of diversity required for each site or Network Element will be provided in the collocation request. If AT&T's requirements exceed the level of diversity which GTE provides to itself in such site or to such Network Element GTE shall have the sole discretion to decide whether to provide a superior level of diversity to AT&T, provided that, AT&T will pay for the provision of such superior quality diversity. In such event, the price will be established on an individual case basis in accordance with the applicable GTE intrastate access tariff. AT&T will also pay for the provision of such diversity in circumstances where AT&T's requirements do not exceed those provided by GTE for itself in such site or to such Network Element, but where capacity does not exist in the fiber or power cabling to accommodate the provision of diversity requested by AT&T. In such circumstances, the price will be established on an individual case basis in accordance with the applicable GTE intrastate access tariff."

Attachment 4:

Attachment 4, Section 6.1.1: As discussed above in the comments for sections 32.9 and Attachment 2, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

> "A list of all services and features technically feasible and currently available from each switch that GTE may provide Local Switching, by switch CLLI;"

Attachment 6:

Attachment 6, 2.5.1: As discussed above in the comments for sections 32.9 and Attachment 2, replace "technically feasible" with "technically feasible and currently available" such that the section appears as follows:

"The Parties agree to record call information in accordance with this subsection. To the extent technically feasible and currently available within a Party's existing systems, each Party will record agreed upon call detail information associated with calls originated or terminated to the other Party's local exchange customer. These records shall be provided at a Party's request and shall be formatted pursuant to Bellcore standards and the terms and conditions of this Attachment. These records shall be transmitted as agreed upon to the other Party in EMR format via Connect:Direct capabilities, such records shall be transmitted as the Parties agree. GTE and AT&T agree that they will retain, at each Party's sole expense, copies of all AMA records transmitted to the other Party for at least seven (7) calendar days after transmission to the other Party.

**Attachment 14:**

The Court in *Iowa Utilities Board v. FCC* explicitly vacated many of the FCC Pricing Rules under the FCC's First Report and Order. Because many of the prices ordered to be included in the agreement by the Alabama Public Service Commission originate from the vacated FCC rules and otherwise conflict with the Eighth Circuit Decisions, the agreement cannot be approved without the following revisions to Attachment 14:

Attachment 14, Appendix 1 - Annex 1:

The Commission's decision to adopt a 23% wholesale discount rate must be reexamined in light of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Commission, in its order dated February 12, 1997, wrongly rejected GTE's "actual avoided cost method" in arriving at the 23% discount. See Order at 64. In so doing, the Commission stated "[t]his panel recommends that GTE's proposed cost study, 'actually avoided' cost method, not be adopted by this Commission." Id. The Commission further concluded that "GTE's position on this issue is both an incorrect interpretation and is contrary to the purpose of the Act." Id. The Court in *Iowa Utilities Board*, however, made clear that the Telecommunications Act of 1996 contemplates that services be provided based upon the cost of an ILEC's actual network, not the cost of some unbuilt superior network as envisioned by AT&T. *Iowa Util. Board* at 24. GTE's compensation for providing its actual network must, therefore correspond to GTE's actual cost of providing that network. Thus, the rates set forth in this Attachment do not currently reflect GTE's actually avoided costs and must be revised accordingly. For further comment on this point please see part 1 of GTE's attached Analysis of the Eighth Circuit's Opinions.

The 23% discount rate adopted by the Commission should also be revised because it was based upon "a hybrid of AT&T's proposal and GTE's modified cost study" Order at 64. Neither proposal can be relied upon in light of the decision in *Iowa*

*Utilities Board*. AT&T's proposal is in conflict with that decision for the reasons stated above and GTE's modified cost study was not to be relied upon in the event that the FCC's pricing rules were held to be unlawful. The Commission even noted with respect to GTE's modified cost study that "GTE intends this study to be used only if the FCC's rules are held to be lawful or if GTE's original study is rejected for other reasons." Analysis of *Iowa Utilities Board*, however, reveals that the FCC's rules were held to be unlawful and GTE's original study should not have been rejected. In sum, by relying upon inappropriate cost studies, the Commission incorrectly adopted a 23% discount rate. The Commission must reexamine its decision and revise the corresponding rates listed in Attachment 14, Appendix 1 accordingly.

Attachment 14, Appendix 2: Delete the reference to FCC pricing standards in the ninth and tenth lines such that the paragraph appears as follows:

> The prices in Appendix 2 to this Attachment 14 are interim and are subject to true-up provisions and further order of the Commission pending submission of cost studies by GTE. The prices listed in this Appendix 2 will remain in effect for three (3) years (Initial Contract Period) or until amended pursuant to pricing orders applicable to Network Elements provided by GTE to AT&T in the State. At the end of the Initial Contract Period, the agreement will automatically renew for an additional one year term, unless one party gives 90 days written notice of a wish to terminate. Upon the giving of such written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the state regulatory commission. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to terminate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix 2 will continue to remain in effect.

Attachment 14, Appendix 2 - Annex 1:

The Commission's reliance on the panel's recommendation for interim rates with regard to unbundled network elements is in conflict with *Iowa Utilities Board*. See Order at 79. Specifically, the panel recommended that unbundled network element prices "be set at TELRIC prices based on the Hatfield Model and a 15% common cost allocator." The Court in *Iowa Utilities Board* made clear that the Telecommunications Act of 1996 requires UNEs to be provided based upon the cost of GTE's actual network, not the cost of some unbuilt superior network. See *Iowa Util. Board* at 24. Yet it is the forbidden costs of some unbuilt superior network upon which AT&T bases its Hatfield model. The rates set forth for UNEs in Appendix 2 - Annex 1 to Attachment 14 must,

therefore, be corrected in accordance with the Eighth Circuit's decision such that they do not reflect these forbidden costs. For further comment please see part 1 of GTE's attached Analysis of the Eighth Circuit's Opinions.

Attachment 14, Appendix 3 - Annex 1:

The Commission's Order that AT&T's Recommended Interim Rates for Collocation be included in the agreement is in conflict with *Iowa Utilities Board*. *See* Order On Interconnection Agreement at Appendix A (ordering adoption of AT&T's proposed language). In so ordering, the Commission offered no explanation for its decision. Although AT&T also has never offered any explanation or substantiation of its proposed rates in Appendix 3, presumably these rates are derived through the use of AT&T's Hatfield model. As discussed above and in GTE's attached analysis of the Eighth Circuit's opinions, such reliance on the Hatfield model conflicts with *Iowa Utilities Board*. The Commission must, therefore, order that AT&T's Recommended Interim Rates be stricken from the agreement pending completion of GTE's cost study and adoption of permanent rates.

Attachment 14, Appendix 4 - Annex 1:

Revise first paragraph in accordance with GTE's comment for Attachment 14, Appendix 2.

Attachment 14, Appendix 6:

Revise first paragraph in accordance with GTE's comment for Attachment 14, Appendix 2.

Attachment 14, Appendix 7:

Revise first paragraph in accordance with GTE's comment for Attachment 14, Appendix 2.